IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

FIRST APPEAL NO.894 of 1996.

The Akkalkot Municipal Council,
through its Chief Executive Officer,
Akkalkot, Dist: Solapur ..Appellant
(Original Opponent
No.3)

versus

1. Shri Vasantrao Tulsiram Kharade
   Age 55 years, Occupation
   Agriculturist & Service.

2. Shri Ashokrao Tulshiram Kharade,
   Age 53 years, Occupation Agriculturist
   and Service.

3. Shri Ugrasen Tulshiram Kharade,
   Age 48 years, Occupation
   Agriculturist and service.

4. Shri Rajesh Tulshiram Kharade,
   Age 43 years, Occ: Agriculturist

5. Shri Vivekanand Tulshiram Kharade,
   Age 30 years, Occupation Agriculturist
   and service.

6. Shri Girajabai Tulshiram Kharade,
Age 76 years, Occ: Household,
all resident of Kharade Galli,
Akkalkot, District Solapur.

7. The State of Maharashtra,
through the Collector of Solapur
Solapur.

8. The Land Acquisition officer
No.3,Solapur.

..Respondents
(Orig. Petitioners
& Respondent Nos.1
& 2 respectively)

Mr. A.P.Kulkarni for the Appellants.

Mr. V.A.Thorat for the Respondents.

ALONGWITH

FIRST APPEAL NO.1330 OF 1996

1. Shri Vasant Tulshiram Kharade
Age 55 yrs. Occup. Agriculturist
& Service.

2. Shri Ashokrao Tulshiram Kharade,
Age 53 years, Occupation

Agriculturist and Service.

3. Shri Ugrasen Tulshiram Kharade,
   Age 48 years, Occupation
   Agriculturist and service.

4. Shri Rajesh Tulshiram Kharade,
   Age 43 years, Occ: Agriculturist

5. Shri Vivekanand Tulshiram Kharade,
   Age 30 years, Occupation
   Agriculturist and service.

6. Shri Girajabai Tulshiram Kharade,
   Age 76 years, Occ: Household,
   all resident of Kharade Galli,
   Akkalkot, District Solapur.

Versus

1. The State of Maharashtra,
   (through the Collector of Solapur)
   Solapur.

2. The Land Acquisition officer No.3,
   Solapur.

3. The Akkalkot Municipal Concil,
   through CEO, Akkalkot,
   District Solapur ..Respondents

Mr.V.A.Thorat for the Appellants
Mr.A.P.Kulkarni for the Respondents

CORAM : B.H. MARLAPALLE &
S.J. VAZIFDAR, JJ.

DATED : 4TH SEPTEMBER, 2009.

JUDGMENT (Per S.J. Vazifdar, J.) :-

1. Both the appeals have been filed against the judgment of the learned District Judge, Solapur, in a reference under Section 18 of the Land Acquisition Act, 1984. The Appellant in Appeal No. 894 of 1996 is the acquiring body and the Appellants in First Appeal No.1330 of 1996 are the claimants. The Appellants in First Appeal No.894 of 1996 have challenged the judgment contending that the compensation granted by the trial Court is too high. The Appellants in First Appeal No.1330 of 1996 have challenged the judgment on the ground that the trial court ought to have granted their entire claim and not only a part thereof.

2. The Acquiring Body and the State Government, apart from contesting the merits of the claim have also contended that the reference was barred by the law of limitation. It is necessary therefore, to set out the facts leading to the

reference. It is also necessary for us to set out certain facts which transpired thereafter as the same are also relevant on the question of limitation in the facts of the present case.

3. The land in question comprises of 5 hectares and 58 ares. The development plan of the acquiring body is dated 1.6.1973 and was published in the Government Gazette on 18.8.1973. The same came into effect on 13.10.1973. There was a notification under Section 37 of the Maharashtra Regional and Town Planning Act regarding the modifications. The land was reserved for hospital staff quarters and road.

4(A). The notification of the acquisition of the entire land under section 126(4) of the MRTP Act was published for the first time on 25.11.1991 and in the gazette on 26.12.1991.

(B). Subsequently, there was a modification issued on 29.9.1992 and published in the gazette on 22.10.1992 whereby an area of 57 ares out of the said land was deleted from the acquisition. This assumes significance in view of the contention as to the relevant date for the purpose of valuation namely whether it ought to be 26.12.1991 or 22.10.1992.

5. The Claimants challenged the notification and acquisition by filing Writ Petition No.1499 of 1993 on 12.4.1993 in this Court. By an order dated 19.4.1993 this court ordered the parties to maintain status quo as regards possession. By an order dated 24.10.1993 the writ petition was dismissed.

6. The award was made on 24.12.1993. There is no dispute that the Claimants were neither present nor represented before the Land Acquisition Officer when the award was made. The Acquiring Body and the State Government contend that the award was served on the Claimants on 29.12.1993 by making panchanama. There is considerable dispute on this question which we will deal with while considering the issue of limitation.

7. According to the Claimants they were not served with the notice and the award, as required under Section 12. We will deal with this aspect later.

8. The possession of the property was taken on 23.12.1993.

9. The Claimants filed a petition for special leave to appeal to the Supreme Court on 3.1.1994 against the order of this Court dated 24.10.1993 dismissing their said Writ Petition.

10. According to the Claimants, pursuant to their application dated 4.1.1994 they received the copies of the panchanama and the award on 14.2.1994. However, the award, according to the Claimants was incomplete. This is also an important aspect which will fall for our consideration while dealing with the question of limitation.

11. On 19.4.1994, the Claimants filed an application for reference under Section 18 of the Act. The same was , according to Mr. Thorat, the learned Senior Counsel appearing on behalf of the Claimants, without prejudice to the pending SLP.

12(A). The SLP was finally disposed of by the following Order :-

> ORDER
>
> Delay Condoned.
>
> Leave granted.
>
> It is not necessary for us to go into the controversy. The High Court in the impugned order has held that though the resolution was passed on 22.1.1988 and moved the Government on 21.7.1989, the declaration having been published U/s. 126(4) of MRTP Act on 18.11.1991 the case of the Appellants has not been prejudiced. Accordingly, it rejected the W.F. Filed by the appellants. It is now brought to our notice that possession has already been taken after the award has been made. In that view, it may be open to the appellants

> to take steps within a period of four weeks from today to tile and application to the matter referred under section 18 of the Land Acquisition Act and compensation would be determined in accordance with law.
>
> The appeal is disposed of accordingly. No costs.

(B). Pursuant to the order of the Supreme Court, a supplemental reference/affidavit was filed by the Claimants before the reference Court on 12.12.1994 i.e. within four weeks of the order of the Supreme Court.

13. The State Government and the Acquiring Body have contended that the original reference filed on 19.4.1994 and the supplemental reference filed pursuant to the order of the Supreme Court are barred by limitation.

14. The trial court framed the following issues :-

ISSUES

1. What is the true and correct market price of acquired land on the date of notification?
2. Whether the compensation awarded by opponent is correct and proper?
3. Is the reference barred under the law of limitation?
4. Does opponent NO.3 prove that the area of 57R has been excluded from the acquisition proceeding by

the State?

5. Do applicants prove that they are entitled for the additional compensation of Rs.1,31,13,300/-?

6. Whether they are entitled for solatium ?

7. What relief and costs?

15. The State Government did not examine any witness. The Acquiring Body examined one M.P. Wagdarikar, its overseer in support of the award. The Claimants examined two witnesses in support of the sale instances relied upon by them. They also examined an Architect, one Mr.A.M. Valsangikar and a Government Authorised Valuer, one Mr.Dilip Shah, who had also tendered his valuation report.

Re: Issue No.3

16. Mr.Kulkarni, learned Counsel appearing on behalf of the acquiring body submitted that the reference was barred by limitation. He submitted that the award was made on 24.12.1993 and was served upon the Claimants on 29.12.1993. The reference, however, was filed on 19.4.1994 which was beyond the period prescribed under the Act. Thus, according to Mr.Kulkarni there was a delay of 22 days in filing the reference under Section 18. Section 12 and Sections 18 of the Act read as under:

12. Exclusion of time in legal proceedings. (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment [1][on which the decree or order is founded] shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation. In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

18. Effect of acknowledgment in writing. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period

> of limitation shall be computed from the time when the acknowledgment was so signed.
>
> (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.
>
> *Explanation*. For the purposes of this section,
>
> (*a*) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
>
> (*b*) the word signed means signed either personally or by an agent duly authorised in this behalf, and
>
> (*c*) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

17. We are unable to agree with Mr.Kulkarni both on merits as well as in view of the order of the Supreme Court.

18. Mr.Thorat submitted that in view of the order of the Supreme Court dated 14.11.1994, there is no question of the reference being barred by limitation.

We have earlier set out the Order of the Supreme

Court dated 14.11.1994. It would be convenient to reproduce the relevant portion thereof again. It reads as under :-

> .....In that view, it may be open to the appellants to take steps within a period of four weeks from today to file an application to the matter referred under section 18 of the Land Acquisitions Act and compensation would be determined in accordance with law.

19. We agree with Mr. Thorat that the order of the Supreme Court specifically entitled the Claimants to file an application under Section 18 of the Land Acquisition Act within four weeks from the date of the order. This infact, the Claimants had already done. Further, pursuant to the said order the Claimants filed the further affidavit/reference On 12.12.1994.

20. It was not seriously disputed that the Supreme Court had granted leave to the Claimants to file a reference within four weeks. It was however contended that the order of the supreme Court is of no consequence and without jurisdiction. To use the words in the written submission filed on behalf of the acquiring body:

> In any event, the Court of law can not extend the period of limitation fixed by the Statute. It is humbly submitted that the Hon. Supreme Court also has no

> jurisdiction to extend the period of limitation fixed by a statute. Thus, apart from the fact that there is no extension as such granted by the Hon. Supreme Court, the aforesaid order can not be interpreted to mean that any such extention has been granted and that therefore the original reference-application is in time.

21. We are unable to accept this contention. Admittedly, there has been no application to review or modify the order of the Supreme Court. It is not open to the High Court to sit in appeal over the judgment of the Supreme Court. We are bound by the order of the Supreme Court.

22. Even assuming that Mr.Kulkarni s contention regarding the Honourable Supreme Court lacking jurisdiction to extend the period of limitation is well founded on the basis of the statute, namely the Land Acquisition Act, it would make no difference so far as we are concerned. We cannot presume that the power under Article 142 of the Constitution of India available to the Supreme Court was not exercised.

23. Even otherwise on merits we have come to the conclusion that the reference is not barred by limitation.

24. It is necessary first to see the pleadings.

(A). In the claim in the land reference the claimants stated as under:

> A) The claimants were not served with the notices of the award. The Claimants were not present or were not represented before No.2 at the time, when the Award was made.
>
> B) The Award has been declared exparte and the notices are also served indirectly by making purported panchanama on or about 29-12-2003, The information and the notice of panchanama became available after the copy was applied on 4.1.1994 and received the same on 14.2.1994

(B). In paragraph 7 the Claimants further stated that the copy of the award supplied was incomplete. Annexures A and C were not supplied inspite of an application for a complete award. The Claimants referred to four letters dated 22.2.1994, 1.3.1994, 19.3.1994 and 11.4.1994 addressed by them requesting that they be furnished with a complete copy of the award.

(C). It is further important to note that pursuant to the order of the Supreme Court, the Claimants filed a supplementary application for reference under Section 18. In paragraph 7 therein also the Claimants had reiterated that they had not been supplied the complete copy of the award.

25. In reply to paragraphs A and B of the original reference, the Acquiring Body in their written statement merely stated that the Claimants had been served by making a panchanama of service on 29.12.1993. They further stated that the Claimants should prove that the information and notice of panchanama became available on 14.2.1994 as alleged in the reference.

26. The reference was filed after more than six weeks even from 14.2.1994. Thus, even if the award had been furnished on 14.2.1994 the reference would be beyond time. The question which falls for consideration therefore is whether the complete award was served on the Claimants and if so when it was so served.

27. It is important to note that in the written statement while dealing with the contention that the Claimants had not been furnished with a complete copy of the award, it was merely stated that the contents of paragraph 7 of the reference are not relevant for determining the amount of compensation. In other words there is no denial of the fact that a complete copy of the award was not furnished to the Claimants.

28. The claimants have expressedly stated that they were not served with the copy of the award on 29.12.1993.

They could not prove the negative. Neither the State Government nor the Acquiring Body have led any evidence to establish that the award was served by panchanama on 29.12.1993. No witnesses were examined by them in this regard. The onus of proving the service indirectly by making the purported panchanama was on the Acquiring Body and the State Government. They failed to discharge this onus.

29. We have referred to the pleadings in detail regarding the Claimants allegations that the complete copy of the award was not served upon them despite repeated requests. We have also indicated that there was no denial of this allegation in the written statement. In fact, the written statement filed by the State Government is absolutely silent regarding the service of the award either on 29.12.1993 or otherwise. The written statement comprises of only 5 paragraphs, none of which deals with this issue. This is important as proof of service of the award complete or otherwise could only be furnished by the State Government whose duty it was to serve the award and who claimed to have served the award. The acquiring body in this regard relied upon the panchanama of purported service of notice under Section 12 of the Act, but this panchanama

was not proved either by examining one of the panch witnesses or the Talathi/Tahsildar, before the Reference Court. Consequently the said document was not placed before the Court and it remained in the S.L.A.O s file.

30. In the circumstances, even on merits we are of the view that the reference is not barred by limitation.

Issue No.3 is therefore answered in the negative.

Re: Issue No.4

31. The issue is not framed correctly. There is no dispute that the area of 57 ares had been excluded from the acquisition. What fell for the consideration of and was considered by the trial court and was even argued before us was the material date for fixing the market value of the acquired property on account of the corrigendum deleting the area of 57 ares from the acquisition. We, therefore proceed to consider the same.

32. As we stated earlier, the notification under Section 4 was published in the gazette on 26.12.1991. This was in respect of the entire land admeasuring 5 hectare and 58 ares. Thereafter a corrigendum was issued on 22.10.1992 by which an area of 57 ares was deleted from acquisition. The question that falls for our consideration is whether 26.12.1991 or 22.10.1992 is the relevant date for fixing

the market value of the acquired property.

33. The learned Judge has come to the conclusion that the former date, namely 26.12.1991 is the relevant date.

The learned Judge held that it is not in every case where there is an amendment to the Section 4 notification that the relevant date is the date on which the amendment was issued. He held that in the present case the Claimants had not indicated how they were mislead by the first notification or that it was not possible for them to know the description of the land to be acquired by the original notification dated 22.12.1991. The description of the land in both the notifications was the same except to the extent of the area deleted by the corrigendum. He further held that the corrigendum did not have the effect of changing the entire complexion of the matter or the nature or the description of the land in question or the name of the owners. The learned Judge therefore rejected the Claimants contention and held that the material date for valuation is the date of the original notifications namely 26.12.1991.

34. In Raghunath vs. State of Maharashtra, (1988) 3SCC 294 the Supreme Court held as under:

> **9.** Before concluding we must refer to one circumstance which was brought to our notice by learned counsel for the

> petitioners and which has also been noticed in the judgment of the High Court. It appears that, between the date of withdrawal of the earlier writ petition (namely, August 23, 1983) and the issue of the second declaration under Section 6 (namely, April 4, 1985), the government had issued a fresh notification under Section 4 for the acquisition of certain lands. The lands in the two notifications under Section 4 do not completely overlap but it appears that some fields are common in both. No declaration under Section 6 appears to have been issued in furtherance of the second notification under Section 4 when the High Court heard the matter. Learned counsel for the petitioner points out that, at least in respect of such of the lands comprised in the Section 4 notification dated June 22, 1982 as are also covered by the subsequent notification under Section 4, it is legitimate to infer that the State Government has superseded the earlier notification by the later one. This contention is clearly well founded. We would, therefore, like to make it clear that in respect of the lands covered by the first notification under Section 4 which are also covered by, or comprised in, the second notification under Section 4, further proceedings regarding acquisition should be taken, in accordance with law, only in pursuance of the later notification and the proceedings initiated in respect of such lands by the first notification dated June 22, 1982 should be deemed to have been superseded.

35. In Hindustan Oil Mills Ltd. V/s. Special Dy. Collector (Land Acquisition)(1990) 1 SCC 59 it was

contended that the compensation awarded on the basis of the market value of the lands on the date of notification was incorrect and that it should have been awarded on the basis of the date of the publication of the subsequent notification. As all the counsel relied upon paragraphs 8 and 9 of the judgment in support of their respective submissions which were also based on the facts of the case before the Supreme Court, we will set them out in their entirety :-

> **8.** Shri Sachhar submits that of the three notifications issued by the government, it is really the third dated February 28, 1963 that is the effective notification under Section 4. He points out that the notice under Section 4 read with Section 5-A issued to the company on March 8, 1963, refers to the notification dated February 28, 1963, as the one in pursuance of which that notice has been issued. He also points out that, while the first two notifications referred only to Sampatlal s lands (and that too inaccurately) it was only the third notification which for the first time mentioned the name of the company. He also submits that, as the notifications dated November 22, 1962 and February 28, 1963 purport to be by way of amendment to the notification of May 11, 1961, they should be treated as fresh notifications under Section 4. He refers to the language of Section 21 of the General Clauses Act, that any amendment can only be effected in the like manner and subject to like sanctions and

conditions, if any as the original notification that is sought to be amended. He, therefore, argues that the notification dated February 28, 1963 is the real and effective notification under Section 4, applicable to this case, in respect of both the lands belonging to the company and the lands belonging to Sampatlal. On the other hand, on behalf of the respondent, the point taken is that the intention of the government, even at the time of the first notification, was to acquire the entirety of survey No. 135/1. However, the government committed certain mistakes in describing the extent and ownership of these lands necessitating the subsequent amendments. Originally, the government was under the impression that the entire extent of the land was 13-20-18 acres, that it belonged to Sampatlal and that it consisted fully of dry lands. Subsequently, it found that certain portions of the land were in the nature of building sites and hence the bifurcation between waste land and building sites was effected by the second notification. It was thereafter discovered that the total extent of the land was 15-30-18 acres, out of which 10 acres belonged to the company and were in the form of building sites and that 5-35-18 acres belonged to Sampatlal and were dry lands. It is submitted that the company and Sampatlal were closely connected with each other and that the company was fully aware of the proceedings taken under the Land Acquisition Act. In fact the initial notification of May 11, 1961 was challenged by Sampatlal. In that litigation there was a compromise, in which it was agreed that 10 acres out of the total extent should be treated as building sites and valued accordingly

and that only the balance should be treated as waste land. It was also known at that time that 10 acres belonged to the company. In short, it is contended that it was always the intention of the government to acquire the entirety of the survey No. 135/1 and that the notification of May 11, 1961 cannot be said to be ineffective merely on the ground that there were some mistakes in describing the nature of the land or the owner. In fact, there is no requirement under the Act that the notification should specify the nature of the lands proposed to be acquired or the owner thereof. The reference to these details in the notification dated April 26, 1961 or any mistakes therein, it is urged, should, therefore, be treated as totally irrelevant for the purposes of considering the effectiveness of the notification of May 11, 1961.

9. We have considered the contentions of both parties and we have come to the conclusion that, in the facts and circumstances of this case, it is only the notification dated February 28, 1963 that can be taken to be the effective notification under Section 4 of the Land Acquisition Act. In the first place, this is the notification on which reliance is placed in the notice under Section 4 read with Section 5-A issued on February 28, 1963. Section 4 of the Land Acquisition Act contemplates the publication of a notice not only in the gazette but also at convenient places in the locality in which the land proposed to be acquired is situated. Though it is true that the notification need not precisely define the nature of the land proposed to be acquired or the persons to whom it is considered to belong, there should be a clear indication in

the notification of the land that is proposed to be acquired, from which the owners or occupiers of the land can get a fair idea as to the details of the acquisition and the impact on their rights. The failure to refer to the name of the company and the reference of Sampatlal as the owner of the entire 13-20-18 acres is a vital defect in the notification. Also, the notification of May 11, 1961 merely sets out 13-20-18 acres as the land proposed to be acquired in survey No. 135/1. Having regard to the fact that the full extent of survey No. 135/1 is much more, the notification does not clearly specify which part of survey No. 135/1 is intended to be acquired. There is nothing to support the contention of the learned counsel for the government that the intention even originally was to acquire the entirety of survey No. 135/1. When it is intended to acquire the entirety of a survey number, it is usual for the relevant notification under Section 4(1) to mention this. So also, where only a part of a survey number is sought to be acquired, that is also indicated within brackets. In the present case, there is nothing to show that the government intended to acquire the entirety of the survey No. 135/1. Thus the notification of May 11, 1961 was defective in material respects. The second notification of June 22, 1962 does not carry matters further as it only gives the split up of waste land and building sites within the area of 13-20-18 acres mentioned in the earlier notification. Even the third notification does not say that it is the entirety of survey No. 135/1 that is proposed to be acquired but it makes a distinction between the land belonging to Sampatlal and the land belonging to

the company. It transpires only from the award that the full extent of the survey No. 135/1 was taken as 15-35-18 acres. It is only in this notification for the first time that the land proposed to be acquired are defined with sufficient precision or clearness and, in our opinion, it is this notification alone that can be taken as the effective notification for purposes of computing the market value. We would like to make it clear that we are resting our conclusion entirely on the language of the notifications in the present case. We do not wish to go to the length of suggesting, as Shri Sachhar did, that, wherever there are notifications by way of amendments, it is only the last of them that can be taken as the effective notification under Section 4. Shri Sachhar in this context referred to a decision of this Court in *Raghunath* v. *State of Maharashtra* (1988) 3 SCC 294 to support his contention that where a subsequent notification is issued it should be deemed to have superseded the earlier one. In that case a notification under Section 4 had been issued in respect of certain lands and this was followed by another notification under Section 4 in respect of certain lands, some of which had been included in the earlier notification as well. A bench of this Court, of which one of us was a member, held that latter notification must be considered to have superseded the earlier one. That decision rested on its facts and cannot be treated as an authority for the general proposition that, even in cases like the present one, where subsequent notifications are in the nature of amendments to the earlier one, the subsequent amendment should be treated as the only effective one. In our opinion where there is a

> notification, which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. In the present case, as we have already said, it appears to us, on a proper construction of the notifications, that the real and effective notification in respect of lands presently in question in survey No. 135/1, was only the notification dated February 28, 1963. The first contention is disposed of accordingly. (emphasis supplied)

36. In the present case, there is no dispute regarding the nature of the land but the extent of the land which was ultimately acquired pursuant to the corrigendum dated 22.10.1992 was different from the extent of the land that was proposed to be acquired under the original notification dated 26.12.1991. The area to be deleted was also obviously not evident from the original notification.

37. Thus, when the original notice was issued the Claimants could not have known the land that was to be acquired eventually. The only knowledge or notice they can be imputed with, even in retrospect, is that the land that was eventually acquired was a part of the land that was originally sought to be acquired. Considering the area that was eventually acquired, it cannot be said that the

Claimants had a clear indication from the original notification of the land that was eventually acquired. They could not therefore have got a fair idea upon receipt of the original notification as to the details of the acquisition and the impact on their rights.

38. In the case before us, there was no question of the corrigendum being introduced to rectify any mistake in the original notification. The corrigendum was issued to alter the decision as to the land that was to be acquired. The corrigendum therefore did not rectify any error in the earlier notification but changed the extent of the land to be acquired. Although 57-R may be a small percentage of the entire land that was acquired it is a substantial portion of the land. We have in fact found it substantial enough to deny any claim on the ground of injurious affectations. It would be useful to note that even in Hindustan Oil Mills Ltd., Court, the difference in the area was small viz. between 15 13 18 acres and 13 20 -18 acres. Yet the Supreme Court held it to be a relevant factor in considering whether the amendment was one only to rectify certain errors or whether the amendment changed the entire complexion of the matter.

39. That the intention of the original notification was

to acquire the entire land would be clear from the fact that the original notification did not mention that the proposal was to acquire only a portion of the land. It did not therefore specify which portion was to be acquired and which portion was not to be acquired. It would be convenient to reproduce yet again a part of Paragraph 9 of the judgment of the Supreme Court in Hindustan Oil Mills Ltd. :

> 9..... When it is intended to acquire the entirety of a survey number, it is usual for the relevant notification under Section 4(1) to mention this. So also, where only a part of a survey number is sought to be acquired, that is also indicated within brackets. In the present case, there is nothing to show that the government intended to acquire the entirety of the survey No. 135/1. Thus the notification of May 11, 1961 was defective in material respects.

40. It is well settled that the Act is a welfare legislation and on compulsory acquisition, the owner looses the land permanently. It would therefore be just and proper to rely upon an interpretation which is more favourable to the land owner specially when the Act provides for due and fair compensation to the owner. In the circumstances, in our opinion the material date would be the date of the corrigendum viz. 22.10.1992 and not

26.12.1991. We answer issue No.4 accordingly.

Re: Issue Nos.1, 2 and 5.

41. These issues pertain to the merits of the valuation of the acquired property.

42. There is little, if any doubt, that the land is centrally situated with all amenities around it. The land is situated near the railway station. There is a 12 meter wide road running through G No.7-6. There is a Government Rest House towards the south of the land and the office of the Cultural Centre of the Nagar Parishad can be approached by the road. The land is only 500 to 1000 meters from the centre of the town of Akkalkot. From the plans furnished it is obvious that there is considerable construction in the area near the acquired land. Indeed it is in the close proximity thereof. The area around the acquired land is being used for many purposes. It was not even disputed before us that the acquired land has enormous NA potential. There is a market and playground nearby, all the necessary facilities are near the acquired property.

The above facts were not disputed. It is not necessary, therefore, for us to consider the evidence in this regard in any further detail.

43. The SLAO relied essentially upon five sale instances

between the period 3.5.1985 to 10.3.1989. The area of these five plots was between 32.80 sq. meters and 337.70 sq.meters. The plan relied upon by the parties indicates the location of these plots. It must be mentioned at this stage that although the area of the acquired land is large, the parties were justified in valuing the same on the basis of the hypothetical lay - out method. That such a development project could be undertaken was not and cannot be disputed. As we have noted earlier, the surrounding area had in fact been developed and both the SLAO and the Claimants have relied upon instances of sales of smaller plots. The only aspect which we must therefore bear in mind is regarding providing appropriate deductions for the development with in a project involving the development of smaller plots.

44. Having said that, however, we are of the view that the instances of sale relied upon by the SLAO and the Acquiring Body before us are not appropriate in the facts of the present case for more than one reason.

45. Firstly, these sale instances pertain to the period much before the relevant date in the present case. These sale instances are dated 3.5.1985, 28.5.1986, 13.10.1986, 24.5.1987 and 12.3.1989. It is true that an appropriate

increment can be granted to arrive at the fair value in the present case. However, it will be noticed that the sale instances relied upon by the claimants and the increase in price of property in this area was far more rapid as the years went by. This is in fact established by the cross-examination of the Claimant s witness. Claimant s witness No.2 Vishwanath Shankar Wale deposed regarding a sale instance I will refer to later. He stated that the plot was purchased on 21.1.1993 for Rs.94,000/-. In cross-examination he stated that it was purchased by his father in 1983 for Rs.9000/-. Thus there was a 1044.44 per cent increase in price in ten years i.e. about 100% per year. The further cross-examination did not dispute these figures. Thus, to rely upon the sale instances much prior to the relevant date would be unfair to the Claimants. This is more so in the present case when the sale instances furnished by the Claimants are more proximate in time to the relevant date in the present case, which we will refer to shortly.

46. There is yet another reason why the sale instances relied upon by the SLAO are not relevant or appropriate. The map furnished by the parties indicate the location of the plots in the corresponding sale instances. The plots in

the sale instances relied upon by the SLAO are considerably far from the acquired land. The nature of the location is also different. On the other hand the plots in the sale instances relied upon by the Claimants are very close to the acquired land.

47. In the circumstances, we are of the opinion that the sale instances relied upon by the Claimants furnish a far better comparison to arrive at a fair market value in the present case.

48. Eleven sale instances were relied upon by the Claimants. However, considering the area of the said plots and the dates of the sales we agree with the Reference Court that sale instances 6 to 11 are not relevant. We will therefore set out the details only of the first five sale instances considered by the Reference Court, which are as under:

	C.S.No.	**Date**	**Area**	**Price**	**M.P.per sq. mtr**
1.	2698/2	16.12.91	461.50	85000/-	Rs.184/- (Ex.59)
		R.R.Price on	13.1.93	165000/-	Rs.351/-
2.	2698/5	22.5.92	267.66	80000/-	Rs.299/- (Ex.60)
3.	2861	7.8.92	209	63000/-	Rs.300/- (Ex.92)
4.	2698/4	20.1.93	267.66	94000/-	Rs.351/- (Ex.61)
5.	2944	17.2.93	168.85	60000/-	Rs.355/- (Ex.43)

On a consideration of all the relevant factors such as the nature and the location of the plots and the dates of the sale instances we find that those at serial Nos.2, 4 and 5 furnish the best comparison. The plot in the sale instance at serial No.3 is considerably far from the acquired land. The relevant date in sale instance No. 1, namely 16.12.1991, it was stated has been obtained from the sale deed which was executed subsequently on 13.1.1993. As there is some controversy regarding the same, we will confine ourselves to the sale instance at serial Nos.2, 4 and 5. In terms of proximity of time of sale and the distance from and the nature of the acquired plots, they are in any event the most appropriate. An average of these three sale instances brings us to the rate of Rs.335/- per sq. meter.

49. Before we refer to the deductions to be made on account of the considerably smaller size of the plots in the sale instances, and in view of the valuation qua the acquired land having been carried out on the basis of a hypothetical lay-out, it is necessary to consider the manner in which the reference Court has arrived at the valuation of Rs.120/- per sq. meter.

50. Firstly, it is pertinent to note that the reference

court expressedly held that the sale instances relied upon by the Claimants cannot be altogether ignored. We agree. The Reference Court also expressed doubts about the sale instances relied upon by the SLAO inter alia for the reasons we have indicated above. We confirm the same. We also agree with the Reference court that the basis on which the sale instance furnished by the claimants was rejected was not justified. The Reference Court also rightly observed that the rate must be reduced by about 1/3rd towards development costs which would be incurred in the development of smaller plots. The Reference Court, therefore, rightly observed that the market rate of the acquired land would not be less than Rs.200 per sq. meter. In fact, if we adopt the mean value of the three most relevant sale instances, the value after deducting 1/3rd price towards cost of development would be Rs.211/- per sq. meter.

51. However, after having made all these observations, the learned Judge adopted an approach which we are, with respect, unable to agree with. Firstly, the learned Judge in paragraph 44 took into consideration the sale instances of the years 1985 to 1986 relied upon by the SLAO and added thereto a percentage to compensate for the same being

prior to the material date. For the reasons we have already stated and which were in fact noted by the Reference Court itself, the same ought not to have been taken into consideration. It is pertinent to note that in paragraph 37 the Reference Court stated that the sale instances relied upon by the Claimants could not be altogether ignored. In paragraph 38 the Reference Court has in fact dealt with the pros and cons of the sale instances relied upon by the SLAO on the one hand and by the Claimants on the other, and furnished reason why the sale instances relied upon by the Claimants ought to have been accepted. It is difficult to understand why then subsequently the Reference Court determined the price on the basis of the sale instances of the year 1985 relied upon by the SLAO.

52. Indeed, the Reference Court thereafter went a step further by restricting the rate on a basis which we are entirely unable to agree with. It would be appropriate to quote the following observations of the Reference Court in this regard :-

> ..... It should be borne in mind that the land is acquired for greater convenience of public at large and there is nothing wrong if the petitioners are also asked to bare with progressive purpose of the State. To some extent they can also contribute for building of the Nation. With this view of making

> justice in the matter, I held it proper to award compensation by fixing the market price of the undeveloped wholesale rate of land at Rs.120/- per sq. mtr., although actual price may be something more as on the date of the notification, having regard to the whole date of sale statistics on record. The petitioners are entitled to 30% solatium on additional market price with 12% component from the date of notification till the date of award under the provisions of Section 23(1A). Moreover, they are entitled to the interest at the rate of 09% P.A. For the first year after award and the interest at the rate of 15% P.A. Thereafter until payment.

53. We are with great respect, unable to agree with the observations or the approach. Having come to the conclusion that the fair value would not be less than Rs. 200/- per sq. meter it was not open to the Reference Court to refuse to value the property on that basis on the ground that in the opinion of the Reference Court, the claimants ought to ..... contribute for building of the Nation. There is nothing in law that entitles a Reference Court to place the burden of nation building upon the claimants alone. These are the factors which are totally extraneous, irrelevant and contrary to the provisions of law.

54. The rate specified in the ready reckoner for similar property is Rs.364/- per sq. meter. Reliance was placed by the claimants upon the Government Circular dated 30.10.1994

wherein the Land Acquisition Officer is directed to grant to the land owners the most favourable rate as determined by the income capitalisation method, comparable sale instances and the ready reckoner.

55. We construed this circular recently by our judgment dated 22.6.2009 in a group of First Appeals the first of which is First Appeal No.182 of 1986. In paragraph 10, we held :-

> 10]It was submitted by Mr. Jamdar as well as Mr. Patil, AGP, that the Reference Court was in error in relying upon the GR dated 31/10/1994. We do not find any force in these submissions. If the Government of Maharashtra in its wisdom has laid down a policy for offering compensation to the owners of the land which has been acquired for public purposes, it would be proper for the Reference Court to rely upon such a policy as well. The said GR clearly states that the compensation for the acquired land is to be granted on the basis of the valuation of the land by way of sale-purchase transaction method and the valuation as per ready reckoner, whichever is higher. On the date of the publication of the notification under Section 4 of the Land Acquisition Act, 1894, the rate prescribed in the ready reckoner by the Government is found to be higher than the market rate as reflected in the sale transactions, it would be necessary that the Reference Court grants market rate on the basis of the valuation as appearing in the ready reckoner. The Government Resolution clearly speaks of the State s intention to offer a better/higher price of land which is acquired for public purposes. It would be, therefore, appropriate that the market rate in the instant case is fixed by following the GR dated 31/10/1994 and in our

opinion the Reference Court did not commit any error in relying upon the same.

We thereafter referred to the judgment of the Supreme Court in Jawajee Nagnathan V. Revenue Divisional Officer, Adilabad, (1994) 4 SCC 595 wherein it was held that the Basic Valuation Register cannot determine the market value and does not bind the parties and that the market rate must be determined in the usual manner. Considering the nature of the circular issued by the Government of Maharashtra we distinguished the judgment of the Supreme Court and held :-

> 12] Mr.Jamdar submitted that the court cannot abdicate its jurisdiction and go by the circular of 1990. The value of the acquired land, according to him, must be decided only on the basis of the three criteria stipulated in the judgment and not by the price indicated in the ready reckoner. He further submitted that the policy is not binding on the Acquiring Body or of any assistance for determining the price of the acquired land under the Land Acquisition Act.
>
> 13] We do not read the judgment of the Supreme Court as prohibiting the Government from making an offer on such terms and conditions as the Government desires. There is nothing in the Act that prohibits a party from negotiating the price without having determined the same by following the procedure under the Act.
>
> 14] What is stated in the policy relied upon by the Appellant is, in effect similar

> to an offer. An award in itself is an offer. There is nothing to suggest that the award cannot be based on the policy of the Government. Indeed, the policy being binding on the Government, the offer must be based thereon. The policy has not been challenged by any party including the Acquiring Body. The error in Mr.Jamdar s submission is equating the offer in the policy with a mere determination of the price of the acquired land on the basis of the ready reckoner.
>
> Mr.Jamdar did not dispute the fact that unless challenged and set aside, the policy must be given effect to. He however submitted that that can be done only by the concerned parties/the owner by filing a Writ Petition and not under the provisions of the Land Acquisition Act. We are unable to agree. We do not find anything in the Land Acquisition Act which prohibits the reference court or the SLAO from implementing this policy. This is despite the fact that the policy cannot bind a stranger thereto including the owner.

56. However, the difference between the sale instances relied upon by the Claimants as stated above and the ready reckoner is only marginal especially in respect of the sale instances at serial Nos.4 and 5. Although sale instance No.4 is closest in point of time sale instance Nos.2 and 5 are not so distant in time from the material date as to be ignored.

57. Thus in the absence of the Government circular, we would have valued the property at Rs.335/- per sq. meter subject to the deductions we will refer to and make later.

However in view of the Government circular and our said judgment the land must be valued at Rs.364/- per sq. meter. Thus even if the material date was the date of the original notification viz. 26.12.1991 and not the date of the corrigendum viz. 22.10.1992 the Claimants would have been entitled to a rate of Rs.364/- per sq. meter subject again to the deductions we will make later.

58. Mr. Kulkarni submitted that the acquired land had a considerable slope as a result whereof huge expenses would be required for levelling. There however is insufficient evidence warranting any deduction from the market price in this regard in addition to the deductions to be made towards development costs. We deduct towards development costs an amount to the extent of 33%. Thus after the deduction the value is Rs.242.67 per sq. meter.

59. It is necessary to mention that the evidence as regards the sale instances was not seriously challenged before us. In any event we are satisfied that there is nothing that militates against the authenticity thereof. We would only mention that the mere fact that sale instances are of a date subsequent to the date of acquisition it would not render them irrelevant. Necessary adjustment on account thereof would require to be made.

60. We do not intend dealing with the evidence of Dilip Shah, the valuer examined on behalf of the Claimants despite the fact that we have held the material date for the valuation to be the date of the corrigendum viz. 22.10.1992. This is for the reason that the sale instances relied upon by the Claimants and referred to earlier are also of a period which cannot be said to be irrelevant. In these circumstances, we do not consider it appropriate to proceed on the basis of the valuation of Rs.400/- per sq. meter arrived at by this witness. In view thereof, it is not necessary for us to deal with the other observations of the Reference Court in respect of his evidence.

61. Mr.Thorat submitted that the Claimants are entitled to compensation on account of injurious affection as a result of an area of 57 Ares being dropped from the acquisition. We do not agree.

The area of 57 Ares (equal to 61355 sq.ft.) is large enough to develop and commercially exploit. In fact the area in the sale instances are substantially smaller. There is no evidence of any loss caused or likely to be caused as a result of the area being deleted from the acquisition.

62. We therefore, confirm the finding of the Reference

Court in this regard as also as regards the entitlement of the Claimants to all statutory benefits. Issue No.6 is answered accordingly.

63. In the circumstances we dispose of both the appeals by modifying the impugned judgment to the extent of :

(i) fixing the value of the acquired property at the rate of Rs.243/- per sq. meter.

(ii) The compensation shall be computed accordingly. The rest of the judgment of the Reference Court is upheld.

(iii) There shall be no order as to costs.

64. On the oral application of Mr.Kulkarni, the ad-interim order granted earlier shall continue for a period of eight weeks from today. The bank guarantee furnished in First Appeal No.894 of 1999 shall be renewed within two weeks from today and kept alive till 31.12.2009.

(S.J. VAZIFDAR, J.) (B.H. MARLAPALLE, J.)